

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

DARREN GILBERT,

Plaintiff,

v.

DABB LIQUOR INCORPORATED dba P J  
Market, et al.,

Defendants.

Case No. 1:22-cv-00485-JLT-SKO

**ORDER DISCHARGING ORDER TO  
SHOW CAUSE**

**FINDINGS AND RECOMMENDATIONS  
TO DECLINE SUPPLEMENTAL  
JURISDICTION OVER PLAINTIFF'S  
STATE LAW CLAIMS**

(Docs. 1, 14, 15)

**14 DAY DEADLINE**

**I. INTRODUCTION**

On April 24, 2022, Plaintiff Darren Gilbert (“Plaintiff”) filed his Complaint against Defendants Dabb Liquor Incorporated dba P J Market and Paramjit Singh alleging claims under the American with Disabilities Act (ADA), California’s Unruh Civil Rights Act, and California’s Health and Safety Code. (Doc. 1). These claims stem from alleged barriers Plaintiff encountered (such as an uneven path of travel) while he visited a facility owned, operated, or leased by Defendants—PJ Market. (*See id.*) No defendant has appeared. Plaintiff has obtained a clerk’s entry of default against Defendants but has not yet moved for entry of default judgment. (Docs. 10 & 11.)

On March 20, 2023, the undersigned ordered Plaintiff to show cause why the Court should

1 not decline to exercise supplemental jurisdiction over his Unruh Act claim in light of the Ninth  
 2 Circuit’s decision in *Vo v. Choi*. (See Doc. 14.); *Vo v. Choi*, 49 F.4th 1167 (9th Cir. 2022) (affirming  
 3 a district court’s decision to decline supplemental jurisdiction over an Unruh Act claim); see 28  
 4 U.S.C. § 1367(c). Plaintiff timely filed a response on April 3, 2023. (Doc. 15.) For the reasons  
 5 discussed below, the undersigned shall discharge the order to show cause and shall recommend that  
 6 supplemental jurisdiction over Plaintiff’s Unruh Act claim, as well as his California Health & Safety  
 7 Code claims, be declined and those claims be dismissed without prejudice.

## 8 II. LEGAL STANDARDS

9 Under 28 U.S.C. § 1367(a), a court that has original jurisdiction over a civil action “shall  
 10 have supplemental jurisdiction over all other claims that are so related to claims in the action within  
 11 such original jurisdiction that they form part of the same case or controversy under Article III of the  
 12 United States Constitution.” The Ninth Circuit has concluded that ADA and Unruh Act claims that  
 13 derive from a common nucleus of operative fact “form part of the ‘same case or controversy’ for  
 14 purposes of § 1367(a).” *Arroyo v. Rosas*, 19 F.4th 1202, 1209 (9th Cir. 2021).

15 However, even where supplemental jurisdiction over a claim exists under § 1367(a), the  
 16 Court may decline jurisdiction over the claim under § 1367(c) if:

- 17 (1) the claim raises a novel or complex issue of State law,
- 18 (2) the claim substantially predominates over the claim or claims over which the  
 district court has original jurisdiction,
- 19 (3) the district court has dismissed all claims over which it has original jurisdiction,  
 or
- 20 (4) in exceptional circumstances, there are other compelling reasons for declining  
 21 jurisdiction.

22 § 1367(c)(1)-(4).

23 Pertinent here, a court deciding whether to apply § 1367(c)(4) must make “a two-part  
 24 inquiry.” *Arroyo*, 19 F.4th at 1210. “First, the district court must articulate why the circumstances  
 25 of the case are exceptional within the meaning of § 1367(c)(4).” *Id.* (citations and internal quotation  
 26 marks omitted). “Second, in determining whether there are compelling reasons for declining  
 27 jurisdiction in a given case, the court should consider what best serves the principles of economy,  
 28 convenience, fairness, and comity which underlie the pendent jurisdiction doctrine articulated in

1 [United Mine Workers of Am. v. Gibbs, 383 U.S. 715 (1966)].” *Id.* (citations and internal quotation  
2 marks omitted).

3 After considering § 1367(c)(4) and California’s requirements for bringing Unruh Act claims,  
4 “[n]umerous federal district courts across California have declined to exercise supplemental  
5 jurisdiction over Unruh Act . . . claims brought alongside ADA claims.” *Rutherford v. Nuway Ins.*  
6 *Agency Inc.*, No. SACV 21-00576-CJC-JDE, 2021 WL 4572008, at \*1 (C.D. Cal. Apr. 1, 2021).  
7 Underlying these decisions is “the recent confluence of several California-law rules [that] have  
8 combined to create a highly unusual systemic impact on ADA-based Unruh Act cases that clearly  
9 threatens to have a significant adverse impact on federal-state comity.” *Arroyo*, 19 F.4th at 1211.

10 Notably, Congress adopted the ADA to address the discrimination encountered by persons  
11 with disabilities, providing a private cause of action to seek injunctive, but not monetary, relief. *See*  
12 *Arroyo v. Rosas*, 19 F.4th 1202, 1205 (9th Cir. 2021) (discussing background and relief available  
13 under the ADA). The Unruh Act likewise prohibits disability discrimination, containing a provision,  
14 Cal. Civ. Code § 51(f), stating that a violation of the ADA also violates the Unruh Act. However,  
15 unlike the ADA, the Unruh Act allows a plaintiff to recover “up to a maximum of three times the  
16 amount of actual damage but in no case less than four thousand dollars.” Cal. Civ. Code § 52(a).

17 In response to perceived abuses of the Unruh Act, California has enacted requirements for  
18 bringing such claims, which requirements the Ninth Circuit has assumed, without deciding, “apply  
19 only in California state court.” *Vo*, 49 F.4th at 1170. For example a provision was added (1)  
20 regarding the contents of demand letters, Cal. Civ. Code § 55.31; (2) imposing heightened pleading  
21 requirements, Cal. Civ. Code § 425.50(a); and (3) requiring an additional filing fee of \$1,000 for so  
22 called “high-frequency litigants,” Cal. Gov’t Code § 70616.5(b), *see* Cal. Civ. Code § 425.55(b)  
23 (defining a high-frequency litigant to include “[a] plaintiff who has filed 10 or more complaints  
24 alleging a construction-related accessibility violation within the 12-month period immediately  
25 preceding the filing of the current complaint alleging a construction-related accessibility  
26 violation.”).

27 All of these requirements<sup>1</sup> apply to claims alleging a construction-related accessibility

28 <sup>1</sup> Cal. Civ. Code § 55.31(a); Cal. Civ. Code § 425.50(a), Cal. Gov’t Code § 70616.5(a).

1 violation, defined as involving “a provision, standard, or regulation under state or federal law  
2 requiring compliance with standards for making new construction and existing facilities accessible  
3 to persons with disabilities,” including those related to the ADA. Cal. Civ. Code § 55.52(a)(1), (6);  
4 *see* Cal. Civ. Code § 55.3(a)(2). By enacting such restrictions, California has expressed a “desire  
5 to limit the financial burdens California’s businesses may face from claims for statutory damages  
6 under the Unruh Act.” *Arroyo*, 19 F.4th at 1209 (internal quotations omitted). However, “Unruh  
7 Act plaintiffs have evaded these limits by filing in a federal forum in which [they] can claim these  
8 state law damages in a manner inconsistent with the state law’s requirements.” *Arroyo*, 19 F.4th at  
9 1213 (internal quotation marks omitted). Consequently, “the procedural strictures that California  
10 put in place have been rendered largely toothless, because they can now be readily evaded.” *Id.*

11       Recently, the Ninth Circuit provided substantial guidance on this issue in *Vo v. Choi* in  
12 affirming a district court’s order denying supplemental jurisdiction over an Unruh Act claim under  
13 § 1367(c)(4). *Vo*, 49 F.4th at 1168. In that case, the district court declined supplemental jurisdiction  
14 over the Unruh Act claim after giving the plaintiff the opportunity to respond and before addressing  
15 the merits of the case. *Id.* at 1168-69. In reviewing the district court’s decision, the Ninth Circuit  
16 held that the district court sufficiently explained why the circumstances of the case were exceptional  
17 under § 1367(c)(4), agreeing with the district court that “it would not be ‘fair’ to defendants and ‘an  
18 affront to the comity between federal and state courts’ to allow plaintiffs to evade California’s  
19 procedural requirements by bringing their claims in federal court.” *Id.* at 1171. The Court also  
20 affirmed the district court’s finding that the balance of the *Gibbs* values—economy, convenience,  
21 fairness, and comity—provided compelling reasons to decline supplemental jurisdiction, stating that  
22 “the district court [properly] analyzed *Vo*’s situation under the *Gibbs* values and determined that the  
23 values of fairness and comity favored not retaining jurisdiction over the claim.” *Id.* at 1172.  
24 Accordingly, “[g]iven these very real concerns, in addition to the deferential standard of review,  
25 [the Ninth Circuit saw] no reason to hold that the district court abused its discretion in determining  
26 there were compelling reasons to decline jurisdiction over the Unruh Act claim.” *Id.*

### 27                                   **III.           ANALYSIS**

28       The Court begins with the first part of the two-step inquiry under § 1367(c)(4)—whether the

1 circumstances here are exceptional. *Vo*, 49 F.4th at 1171.

2 As discussed above, California has enacted various requirements that apply to claims  
3 alleging a construction-related accessibility violation. If the Court were to exercise jurisdiction over  
4 Plaintiff's Unruh Act claim, Plaintiff would be permitted to avoid these requirements. *See Arroyo*,  
5 19 F.4th at 1213 (noting that potential evasion of California's requirements met exceptional-  
6 circumstances prong of § 1367(c)(4)). Further, such evasion would undermine California's policy  
7 interests in enforcing its requirements—providing monetary relief but limiting burdens on small  
8 businesses and disincentivizing plaintiffs' attorneys from obtaining "monetary settlements at the  
9 expense of forward-looking relief that might benefit the general public." *Id.* Plaintiff offers no  
10 argument for why such circumstances should not be deemed exceptional, and there is "little doubt  
11 that the first prong [under § 1367(c)(4)] is satisfied here." *Vo*, 49 F.4th at 1171. *See also Garcia v.*  
12 *Maciel*, No. 21-CV-03743-JCS, 2022 WL 395316, at \*2 (N.D. Cal. Feb. 9, 2022) (collecting cases).

13 Turning to the second part of the inquiry—whether there are other compelling reasons for  
14 declining jurisdiction—the Court considers the *Gibbs* values of economy, convenience, fairness,  
15 and comity. *Vo*, 49 F.4th at 1171. Importantly, this case is an early stage of the litigation—no  
16 Defendant has appeared. While Plaintiff has obtained a clerk's entry of default against Defendants,  
17 he has not yet moved for default judgment, and thus, the merits of Plaintiff's claims have not yet  
18 been addressed. *See Arroyo*, 19 F.4th at 1214 (noting that the *Gibbs* values did not support declining  
19 supplemental jurisdiction where the case was at a "very late stage"). This is not a case "where it  
20 makes no sense to decline jurisdiction . . . over a pendent state law claim that that court has  
21 effectively already decided." *Id.* Notably, Plaintiff makes no argument that the stage of this case  
22 warrants exercising jurisdiction.

23 Moreover, in light of the above discussion of California's requirements for Unruh Act  
24 claims, it would not be fair, nor would comity be served, by allowing Plaintiff's Unruh Act claim to  
25 proceed without the state court being able to enforce its policy interests as reflected in its various  
26 procedural requirements. *Id.* at 1213 (noting "comity-based concerns that California's policy  
27 objectives in this area were being wholly thwarted" by plaintiffs being able to bring Unruh Act  
28 claims in federal court). On this issue, Plaintiff concedes in his response to the show cause order

1 that he would be considered a high-frequency litigant and would otherwise have to meet certain  
 2 California requirements, such as paying the \$1,000 filing fee in state court.<sup>2</sup> (Doc. 15 at 2 (“Plaintiff  
 3 acknowledges that he would be considered a high-frequency litigant under California law as he filed  
 4 more than ten construction-related accessibility claims in the twelve months preceding the filing of  
 5 the instant action.”).)

6 Plaintiff raises two arguments for why the Court should exercise jurisdiction. First, Plaintiff  
 7 states that his complaint meets the heightened pleading requirements of § 425.50. (*See* Doc. 15 at  
 8 2.) At this stage, however, the Court only need to determine whether California’s requirements are  
 9 implicated, not whether they are in fact met. As *Vo* noted, whether a Plaintiff “has satisfied the  
 10 heightened pleading requirements” imposed in California is a question for the state court because  
 11 “[f]orcing the district court to determine if [this is] in fact true would itself run afoul of the *Gibbs*  
 12 values—especially comity,” and would deprive California of playing its “critical role in effectuating  
 13 the policies underlying [its] reforms.” *Vo*, 49 F.4th at 1173-74 (internal citation omitted).

14 Second, Plaintiff contends that requiring him to bring a second action in state court “would  
 15 be duplicative and would only increase the ultimate burden on the subject business, as Plaintiff  
 16 would be entitled to seek recovery of the additional attorney’s fees and costs spent bringing the  
 17 second action.” (Doc. 15 at 3.) As an initial matter, this argument improperly assumes that Plaintiff  
 18 will be successful in this action. Even accepting such an assumption, the fact that the litigation  
 19 could prove duplicative or increase costs does not, in light of the other considerations, warrant  
 20 retaining jurisdiction. As one court has concluded, “if plaintiff legitimately seeks to litigate this  
 21 action in a single forum, plaintiff may dismiss this action and refile it in a state court in accordance  
 22 with the requirements California has imposed on such actions.” *Garibay v. Rodriguez*, No. CV 18-  
 23 9187 PA (AFMX), 2019 WL 5204294, at \*6 (C.D. Cal. Aug. 27, 2019). Moreover, it is California’s  
 24 prerogative to impose a heightened filing fee for high-frequency litigants in an effort to curb abuses  
 25 of the Unruh Act at the risk of the fee being ultimately paid by defendants. It would undermine  
 26 comity and fairness were Plaintiff permitted to proceed with his Unruh Act claim in light of

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27 <sup>2</sup> While the Court acknowledges Plaintiff’s concession, it need not determine whether he is in fact a high-frequency  
 28 litigant. *Vo*, 49 F.4th at 1174 (noting that court was not required to determine whether the plaintiff was in fact a high-  
 frequency litigant).

1 California's policy concerns.

2 Accordingly, considering the two-step inquiry under § 1367(c)(4), the undersigned  
3 concludes that this case presents "exceptional circumstances" such that "there are other compelling  
4 reasons for declining [supplemental] jurisdiction" over Plaintiff's Unruh Act and Health & Safety  
5 Code claims.<sup>3</sup>

6 **IV. ORDER AND RECOMMENDATIONS**

7 The Court's order to show cause (Doc. 14) is hereby DISCHARGED. For the reasons given  
8 above, IT IS RECOMMENDED as follows:

- 9 1. Pursuant to 28 U.S.C. § 1367(c)(4) and *Vo v. Choi*, 49 F.4th 1167 (9th Cir. 2022),  
10 the Court DECLINE to exercise supplemental jurisdiction over Plaintiff's Unruh Act  
11 claim and Plaintiff's Cal. Health & Safety Code § 19955 and § 19959 claims; and  
12 2. Plaintiff's Unruh Act and Cal. Health & Safety Code § 19955 and § 19959 claims be  
13 DISMISSED WITHOUT PREJUDICE pursuant to 28 U.S.C. § 1367(c)(4).

14 These findings and recommendations will be submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within fourteen**  
16 **(14) days** after being served with these findings and recommendations, any party may file written  
17 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
18 Findings and Recommendations." The parties are advised that failure to file objections within the  
19 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,  
20 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21 IT IS SO ORDERED.  
22

23 Dated: **April 14, 2023**

**/s/ Sheila K. Oberto**  
UNITED STATES MAGISTRATE JUDGE

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26  
27 <sup>3</sup> Plaintiff's California Health & Safety Code claims are subject to the same heightened pleading and filing requirements  
28 as his Unruh Act claim. *See Gilbert v. Singh*, No. 1:21cv1338-AWI-HBK, 2023 WL 2239335, \*2 (E.D. Cal. Feb. 27,  
2023). Therefore, the same considerations that counsel against maintaining supplemental jurisdiction over Plaintiff's  
Unruh Act claims apply equally to Plaintiffs Health & Safety Code claims. *See id.*